

Government officials are driving Californians deeper in debt, after borrowing billions of dollars in a failed attempt to double fish populations. Conversely, Department of Water Resources (DWR) officials have killed tens-of-millions listed salmonid and other species, at the State Water Project (SWP) Delta export pumping plants, and got paid in the process and are not being held accountable for their actions.

The Law Office of Joel C. Baiocchi formally notified federal and state officials of Porgans & Associates (P&A), Inc. intent to sue officials, and nongovernmental culpable parties-collaborators) responsible for failing to provide water for fish and for violating the provisions of the federal Endangered Species Act "Take".

Three years ago, P&A initiated an independent research assessment of government's role in declining salmonid populations in California. Recently, Baiocchi submitted a Sixty Day Notice of intent to sue, outlining in detail, officials' collective and unrelenting failure to provide water for fish and revealing their inherent conflicting roles as regulators, water purveyors and Public Trustees.

Patrick Porgans, a solutionist, and long-time advocate of Public Trust protection and government accountability, stated, "Based on the information from "official" sources, the salmon collapse is not the result of natural phenomenon, it is the direct result of a government-induced disaster which has been in the making for decades. The crux of the matter is premised on the fact that government is required to provide water for fish; it has failed to do so, and is in violation of the federal Endangered Species Act and other laws that provide protection for listed species."

Contrary to the Governor's position, this is not about *people versus fish, but* is about his administration's mismanagement of both financial and natural resources. The State Water Resources Control Board (Board) is responsible for the administration of water rights appropriations; its records show that it has over-appropriated the waters of the state by 500 percent.

Furthermore, neither the Board nor the Department of Fish and Game can provide a readily available accounting of the amount of water provided for fish needs, primarily because, in most cases, they do not set a numerical flow value required to sustain listed species. It does not monitor to ensure the fish water needs are being met – that is the diverter's job.

In cases when the SWRCB was fully aware of the fact that illegal diversions, such as the 1,771 illegal diversions in the North Coast Region, most in "Wine Country", the Board simply failed to abate the unlawful diversions. The National Marine Fisheries Service advised the Board that the unauthorized diversions in that area were responsible for the "Take" of listed species and violated the provisions of the ESA; it took no action.

While officials are not providing water for fish, according to California's Legislative Analyst's Office, since 1996, voters have approved \$14 billion in General Obligation Bonds for water-related programs, which included buying water for fish. More than \$5 billion has been expended on a myriad of water supply reliability and fish-doubling programs. Most of those funds were administered through CALFED, a consortium of federal and state agencies, a number of which are directly responsible for the disastrous decline in salmonid populations, such as the Department and Bureau of Reclamation. They are also major water purveyors, regulators, Public Trustees and unaccountable violators of the law.

Government officials are not penalized when they curtail water exports from the Delta, as a result of killing listed species; they get paid and are rewarded for purportedly not pumping. At times, when officials exceeded the "take" limits under the ESA, they got back together and increased the number of fish they could "legally" kill.

To date, the only so-called relief available to abate the carte blanche killing at the Delta pumps is when a non-governmental entity files a lawsuit requesting judicial intervention. Ironically, this de facto action does not address the fundamental unaccountability of officials' business-as-usual kill and get paid for not killing fish. It simply affords officials more free press, public empathy and free money to ensure the water supply reliability of SWP and federal Central Valley Project contractors.

Coincidentally, the project operators count the fish they kill and they pass the "data" down the food chain to their sister "responsible" for fish and wildlife protection. P&A formally requested scientific proof from officials that would validate the effectiveness of the CALFED decade-in-the-making Delta improvement and fish-doubling effort.

Unfortunately, despite the plethora of studies conducted, no quantitative analysis has been done to validate the effectiveness of the programs or the fish-doubling effort. Conversely, officials admit that there does not appear to be any increase in the doubling of fish populations or that the water for fish is even working.

The \$345 million spent from the Environmental Water Account (EWA), for buying water for the fish to help achieve the fish-doubling goal, which was supposed to occur around the year 2002, and the other \$5,000,000,000 in related efforts, is another taxpayer subsidized disaster. In fact, based on the government's data, which are dubious, salmonid populations are worse now than ever.

Furthermore, an estimated two-million acre-feet of water "purchased" through the EWA, between 2001 and 2007, was not from water purchased for fish flows, rather the result of water officials' claims they did not pump. The SWP export rates, according to the Department, were in excess of 3,000,000 acre-feet for the years 2003, 2004, 2005, 2006; a reduction in pumping and an increase in exports! The hundreds of millions of dollars paid for not pumping were from General Bond funds, and are backed by the full faith and credit of the State.

Much of the water purchased through the EWA for fish protection also became available to state and federal water project contractors, which the Department and Bureau sucked out of the Delta, after the fish were done using the water. In addition, a substantial portion of the additional 800,000 acre-feet of water allocated for fish doubling purposes, from the federal Central Valley Project, can be sucked up at the Delta pumping plants and exported south. The majority of the water goes to irrigate lands in the San Joaquin Valley, which are the primary cause of the extensive surface and groundwater contamination plaguing the region and making fish unfit for human consumption.

FISH DOUBLING GRAPH - SALMONID DECLINE IN CENTRAL VALLEY STOCKS

DRAFT 03-13-08

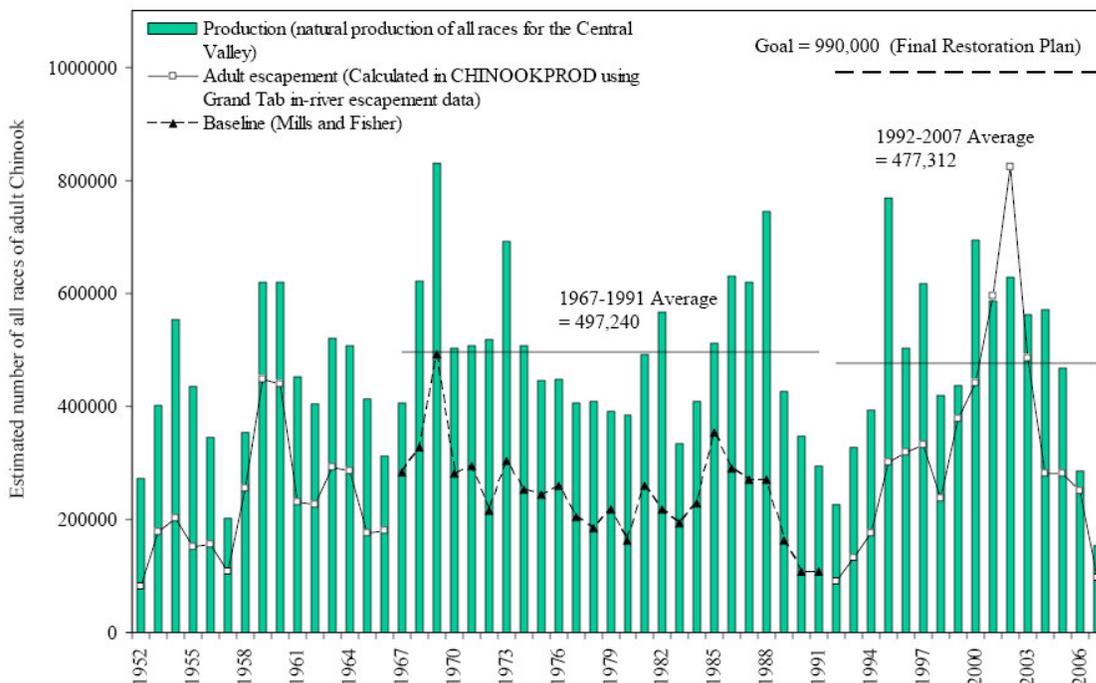


Figure 1. Estimated yearly natural production and in-river escapement of all races of adult Chinook Salmon in the Central Valley rivers and streams. 1952 - 1966 and 1992 - 2007 numbers are calculated in CHINOOKPROD using CDFG Grand Tab in-river escapement data (March 1, 2008). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

1992 Central Valley Project Improvement Act: *Section 3406(b)(1) of the CVPIA. Develop within three years of enactment and implement a program which will make all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in the Central Valley rivers and streams will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period of 1967-1991.* Source: David Jones, Public Affairs, USBR, (916-972-5100).

SWP and CVP High Delta Exports, Reduced Water Runoff and Declining Salmon Populations: A classic example of the enormity and complexities of ascertaining the relationship, between high exports, reduced runoff and declining salmonid populations are indicative in the data exhibited on the two graphics. Runoff values, stated for a given water year type are, in most cases, for total flows is above the dams. Therefore, those runoff values do not accurately reflect the actual amount of water that flowed below the dams and into the Delta. For example, in most years when exports were high, fish populations, appeared to have declined. When one examines the graphs for the period of 1987 through 1992, a period of an extended drought, the increased rates of exports, which up until that period were the highest on record, correspond to the declining salmonid populations. In 1986, which was classified as a “wet year” (estimated 25 million acre-feet of water of runoff) followed by a series of critical and dry years (six years of which five produce about nine (9) million acre-feet (MAF) or less runoff annually. When one examines the ratio of water pumped/exported, at the governments’ Delta facilities, in 1987, 1988, 1989 and 1990, it indicates that more than 50 percent of the “recorded” runoff was exported. Correspondingly, there was a continued decrease in salmonid populations for those years. Conversely, in 1991 and 1992, although salmon populations were still drastically down, the amount of water exported, in relation to “runoff” was significantly less, at which times there appears to be a slight increase in populations.

Ironically, although government officials acknowledged, more than 30 years ago, that the impacts of water exports on anadromous species are significant, it has yet to conduct a quantitative analysis of the extend of the impacts on salmonid species populations and/or fluctuations in abundance associated with project operations! As stated herein, P&A have confirmed the absence of scientific verification “quantitative analysis” on CALFED, EWA and the Pacific Coast Salmon Recovery Fund Program. The issue of a lack of a “quantitative analysis” was recently brought up, at yet another government sponsored “Delta Vision - save the Bay-Delta Estuary” CALFED science conference, held in the Golden State. Reportedly, there were 1200 scientists, from the government and private consulting sectors, in attendance. Dan Bacher, a writer and sports fisherman asked, if any of the scientists had conducted or knew of a quantitative analysis study pertinent to predation and related fish losses attributable to the governments’ Delta pumping exports. They conceded they knew of no such study.

The Bay-Delta Estuary is the most-intensively studied body of water on earth. Billions of dollars have been expended, in last 10 years, conducting a plethora of studies; none of the studies dealt with such fundamental issues as the effectiveness of buying water for fish and/or quantifying the adverse impacts of water exports on aquatic species!

DWR and U.S. Bureau of Reclamation Resorted to Illegally Taking Water Designated for Fish and Other Beneficial Uses and Users in the Delta: In the interim, DWR resorted to a myriad of tactics to get additional water to increase the SWP’s reliability; including stealing water. During the 1987-1992 drought, DWR had to come to grips with a problem it created back in the 1960’s, when it contracted more water than the SWP would be able to provide. P&A monitored and review of the amounts of water both the SWP and CVP exported from the Delta during the 1987 to 1992 drought, and made public the fact that those two projects exported more water from the Delta, during the first four years of the drought, than in any other four years of the operation of those two projects. In addition, P&A established the fact that the DWR and the USBR illegally exported and/or failed to release water required for salmonid species flow requirements and other designated purposes in the Delta.¹ According to documents, generated by SWRCB staff, with the assistance of the authors, the 350,000 to 500,000 acre-feet of water illegally acquired by the DWR and USBR, was worth an estimated at more than \$29 million, and resulted in more than 289 violations of the terms and conditions of their permits.² The Board did not take an enforcement action against either the DWR or the USBR; they were not held accountable for the 289 violations. *“This is to advise you [DWR and USBR] that the Board will not take an enforcement action regarding the 1991 and 1992 exceedences of the D-1485 standards.”*³ More than a dozen California legislators sent a letter to the Board stating that they were deeply distressed by the Board’s failure to enforce the provisions of Water Right Decision 1485.⁴

¹ W. Don Maughan, Chairman, State Water Resources Control Board letter to Patrick Porgans, *Response to Your Request for Information on the 1991 and 1992 Decision 1485 Violations*, 30 September 1992.

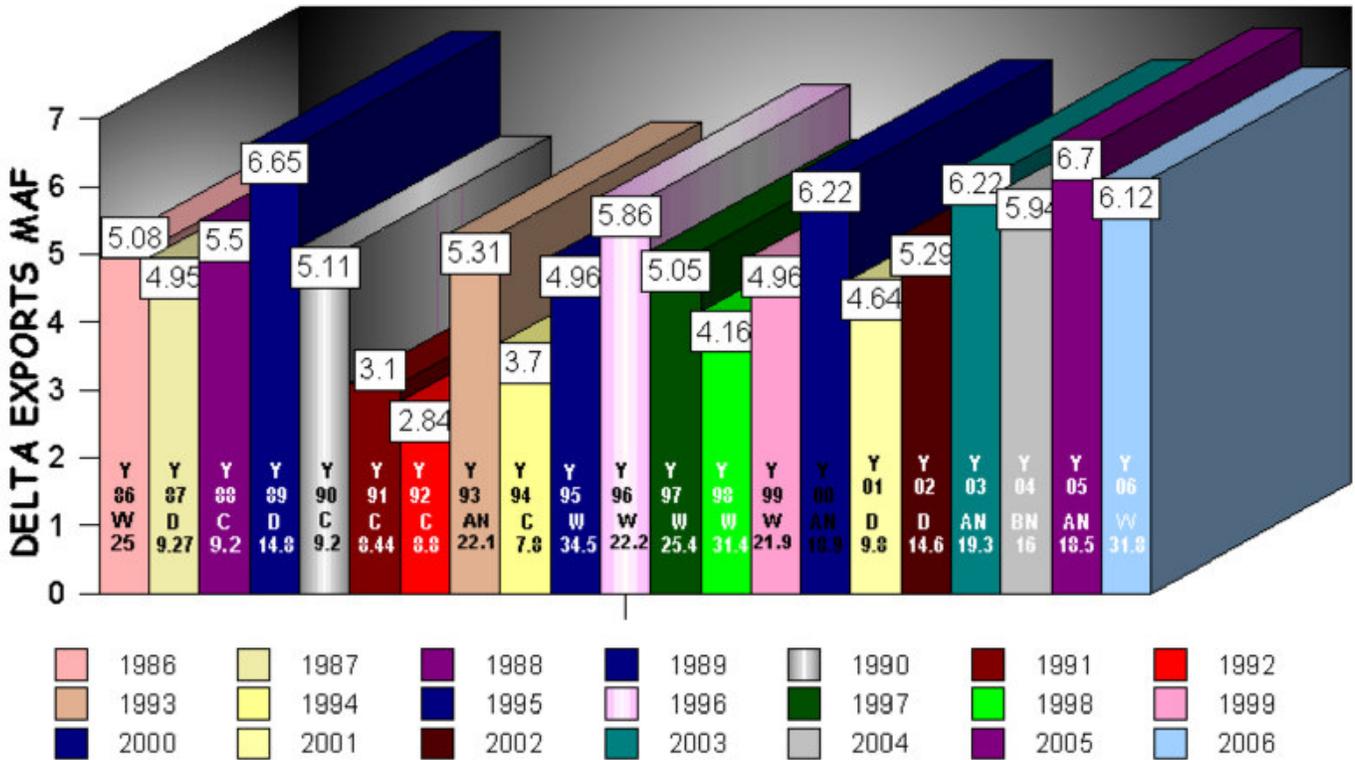
² State Water Resources Control Board’s *Public Hearing, Subject: Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh*, SWRCB Exhibits 19 and 20, November 30, 1992.

³ Walt Pettit, Executive Director, SWRCB letter to David Kennedy, Director, Department of Water Resources and Roger Patterson, Regional Director, U.S. Bureau of Reclamation, *Re: Compliance During 1991 and 1992 with Water Right Decision 1485*, June 11, 1993.

⁴ Senator Milton Marks, et al, letter to John Caffr ey, Chaiman, State Water Resources Control Board, 12 July 1993.

SWP & CVP PUMPED-EXPORTS IN MILLION ACRE-FEET BETWEEN 1986-2006

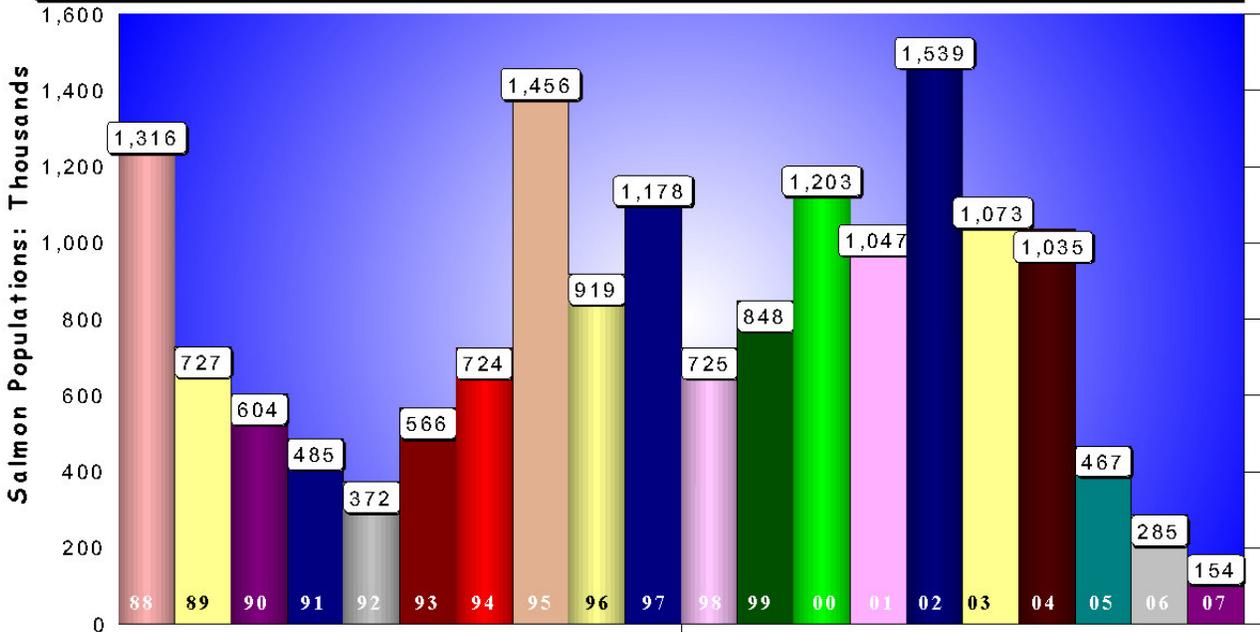
Calendar Year Jan 1 -- Dec 31



NOTE: Number values at base of columns are "Official Year Classifications" based on May 1 Runoff forecast — Sacramento Valley Index (W) Wet (AB) Above Normal (BN) Below Normal (D) Dry (C) Critical in (MAF) Million acre-feet. [Color of column on this graph coincide with Chinook Prod, Graph — Cohort 3-Year Cycle of Returning Salmon.]

Graph Produced by Patrick Porgans & Associates, Inc. Updated: April 2008 © DWR/USBR Data

CHINOOK PROD: Yearly Salmon Population [Total-All Races] Central Valley, CA



NOTE: Why Have Salmon & Steelhead Declined? California's anadromous salmon and steelhead are widely distributed throughout coastal and inland watersheds, as well as the marine environment and rely on a complex array of ecosystems to complete their life-cycle. Consequently, many factors can affect their successful reproduction and survival. Some of these factors include: Watershed Modifications...Channel Modifications...Water Developments...Hatcheries...Fishery Harvest...Ocean Conditions, Climate Cycle, and Climate Change... [Source: NOAA, National Marine Fisheries Service, Southwest Region, Pacific Salmon and Steelhead Recovery in California, undated, p. 4.] The drastic declines in salmon populations in California are not the result of any one particular cause. Albeit, there are also other factors significantly impacting salmon and steelhead populations: Delta exports from government water projects; water runoff in the Sacramento River Basin; water quality and quantity; government's conflicting role as water purveyor and public trustee; under staffing and under funding of enforcement programs; selective enforcement policies; the absence of a cohesive salmon protection plan and/or a commitment to carry such a plan. The numbers compiled by the government for this graph are rife with qualifiers, assumptions and caveats. The reader is advised to visit the following website to get more information about the numbers (www.delta.dfg.ca.gov). The salmon population numbers were obtained by P&A from the U.S. Fish and Wildlife Service's Anadromous Fish Restoration program from Rick Burmester, Biologist, at 209-334-2988, ext. 407. They were taken from Chinook Prod; some are still classified as preliminary numbers. This graph in conjunction with P&A's graph depicting Delta water exports from the CVP and the SWP indicate a relationship between high export rates and low fish populations. However, actual fish losses attributed to Delta project exports have yet to be scientifically quantified or qualified. Graph by Porgans & Associates, Inc. March 2008. E-mail: porgans@porgans.com

Note-Last line reads: Losses attributed to Delta project exports have yet to be scientifically quantified or qualified. Graph by Porgans & Associates©

